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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,342	12/13/2001	Robert Hundt	10019982-1	6805

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EXAMINER	
MITCHELL, JASON D	

ART UNIT	PAPER NUMBER
2193	

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/017,342	HUNDT ET AL.	
	Examiner	Art Unit	
	Jason Mitchell	2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *2/21/06*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This action is in response to remarks filed on 2/21/06.

At Applicant's request, claims 1, 6, 11 and 14 have been amended. Claims 1-15 are pending in this case.

Response to Arguments

Starting in the paragraph bridging pp. 8 and 9 and continuing on to the last full paragraph on pg. 9, Applicant states:

> Applicants respectfully disagree with the Office Action's assertion that "It would have been obvious to a person of ordinary skill in the art at the time of the invention to raise a fault" ...[and] ..."to submit any newly created child process to Benitez' 'Cold Block Remover'" because there was a long felt but unresolved need and also be cause others, such as Benitez and Unix, failed to recognize the problem.

Examiner respectfully disagrees. Applicant states that the claimed subject matter solved a problem that was long standing in the art. However, there is no showing that others of ordinary skill in the art were working on the problem and if so, for how long. In addition, there is no evidence that if persons skilled in the art who were presumably working on the problem knew of the teachings of the above cited references, they would still be unable to solve the problem. See MPEP § 716.04.

In the paragraph bridging pp. 9 and 10, Applicant states:

> Applicants want to point out that at the bottom of the Unix reference, which as provided by the USPTO, shows a data of "12/21/2005."

Respectfully this is the date examiner printed the document. As stated on the PTO-892 this version of the reference was first published 3/2/99. This date was given by "The

Wayback Machine" which can be found at http://www.archive.org/web/web.php. This resource is commonly relied upon by Examiners to provide dates for otherwise undated web references.

Claim Rejections - 35 USC § 112

Claims 1, 6 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims have been amended to recite, "wherein the unmapping of the instrumented code space results in the generation of the fault". This language could reasonably be read as reciting that the simple act of unmapping instrumented code could cause a fault to be raised. This is inconsistent with the specification, which requires the unmapped code to be accessed before the fault is raised.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,189,141 to Benitez et al. (Benitez) in view of "Unix Programming Frequently Asked Questions – 1. Process Control".

Regarding Claims 1, 6 and 11: Benitez discloses reverting a process in an in-line instrumented state to an uninstrumented state (col. 4, lines 21-22 'removes a hot trace') by modifying selected text segment portions from said process (col. 29, lines 19-24 'a target address of a translated instruction ... is replaced with the address of the corresponding original instruction'); unmapping instrumented code space such that said instrumented code space is inaccessible to said process (col. 27, lines 49-51 'changes hot block storage management map so that ... coldest blocks are indicated to be available'); provided an instruction pointer resides in said instrumented code space, updating said instruction pointer to uninstrumented code space (col. 29, lines 19-24 'address of a translated instruction ... is replaced with the address of the corresponding original instruction'); and executing said process and, provided said process generates a fault, providing a corresponding address in said uninstrumented code space (col. 11, lines 28-38 'an error condition has been detected ... control is returned to interrupter-preserver ... resuming conventional execution').

Benitez does not explicitly disclose that said process generates the fault by seeking to access an address in instrumented code space. However Benitez does teach that control should be returned to fetcher 430 when (col. 30, 'If cold trace detector and remover 1220 had not been invoked, ... time may be spent returning control to instruction fetcher 430'), and It would have been obvious to a person of ordinary skill in the art at the time of the invention to raise a fault (col. 11, lines 28-38 'an error condition has been detected') in this instance as a means of returning control to the uninstrumented code (col. 30, 'returning control to instruction fetcher 430').

Further, Benitez does not explicitly disclose receiving a child process having inherited an instrumented parent process' context but does disclose receiving new processes (col. 23, lines 19-20 'creates a record in table 222 ... if a record does not already exist'). Unix teaches a child process having inherited an instrumented parent process' context including a parent's program text that may have been modified by instrumentation (pg. 1, 'The fork () function is used to create a new process from an existing process').

It would have been obvious to a person of ordinary skill in the art at the time of the invention to submit any newly created child process to Benitez' 'Cold Block Remover' (col. 27, lines 49-51) because 'A hot trace is a trace through which control ... has passed more than a predetermined number of times (col. 2, line 41-44).

Regarding Claims 2, 7 and 12: The rejections of claims 1, 6 and 11 are incorporated respectively; further, Benitez discloses said selected text segment portions are selected from the group consisting of: branches, switch tables, procedure lookup tables (PLTs) for said instrumented code space (col. 29, line 20 'backpatches a jump'). Please note that branches, switch tables and PLT's are all considered jumps (col. 2, lines 62-65 'transferring control over an arc ... is referred to as a jump').

Benitez does not explicitly disclose the text segment portions being selected from a group of breakpoints however he does disclose changing instructions that facilitate debugging and monitoring (col. 34, lines 16-20 'such functions as debugging, ... monitoring')

It would have been obvious to a person of ordinary skill in the art at the time of the invention to include text segment portions representing breakpoints in addition to the

jump instructions explicitly disclosed in Benitez (col. 29, line 20) because one of ordinary skill in the art would want the ability to provide a more complete translation of the code (col. 34, lines 11- 16 'may instrument, or other wise translate, instructions ... in addition to such instrumentation').

Regarding Claims 3, 8 and 13: The rejections of claims 1, 6 and 11 are incorporated respectively; further, Benitez discloses said instrumented code space is comprised of shared memory (col. 10, lines 15-16 'instruments hot blocks and stores them in main memory').

Regarding Claims 4, 9 and 14: The rejections of claims 1, 6 and 11 are incorporated respectively; further, Benitez discloses unwinding a call stack of said process and recording return addresses of said process (Fig. 6D).

The hot block-arc table shown in Fig. 6D is a record of jumps the execution has followed. The value in column 222D represents the target address of each jump instruction (col. 28, line 3 'column 222D ... the jump arc target'), and the value of column 222B represents the jump instruction's address (col. 28, lines 22-27 'the "starting hot block address" ... represented by column 212B'). The Backpatcher follows a path retrieved from this table (col. 2, lines 1-3 'determination is made by examining the fields for each record') in order to de-instrument any code that has 'gone cold' (col. 29, lines 21-24 'target address of a translated instruction ... is replaced with the address ... in original instruction storage').

Regarding Claims 5, 10 and 15: The rejections of claims 4, 9 and 14 are incorporated respectively; further Benitez discloses comparing said return addresses of said process

to said address in said instrumented code space which generated said fault upon execution of said process (col. 27, lines 63-67 'backpacker searches hot block-arc table to determine if any ... block has a jump instruction that jumps to the block from which translated instructions were translated').

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Mitchell whose telephone number is (571) 272-3728. The examiner can normally be reached on Monday-Thursday and alternate Fridays 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jason Mitchell
3/21/06

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